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A MOTHER'S FUNERAL.

BY THE LATE NORMAN MACLEOD, D. D.

Ah, sure ye'll lay yer mither doon
In her lanely bed and narrow;
But, till ye're sleepin' by her side
Ye'll never meet her marrow!

A faither's love is strong and deep,
And ready is a brither's—
A sister's love is pure and sweet—
But what love's like a mither's?

Ye maunna greet ower muckle, bairns,
As round the fire ye gaither,
And see the twa chairs empty then
O' mither and o' faither;

Nor dinna let yer hearts be dreich,
When Wintry winds are blawin',
And on their graves, wi' angry sugh,
The snelly drift is snawin';

But think of blyther times gane by—
The mony years of blessing,
When sorrow passed the door, and nane
Frae 'mang ye a' were missing.

And mind the peacefu' gloamin' hours
When the out-door wark was endin',
And after time, when auld heads
Wi' yours in prayer were bendin'.

And think how happy baith are noo,
Aboon a' thocht or tellin';
For they're at hame, and young again,
Within their Faither's dwellin'.

Sae, gin ye wish to meet up there
Yer faither and yer mither,
O love their God, and be gude bairns,
And O love ane anither!

Variety.

A Rifle Company—a gang of thieves.

Forced Politeness—bowing to circumstances.

A bad style of Arithmetic—division among families.

Shakesperean reader to a thermometer—Down, down, thou climbing sorrow!

What ancient implement of war does a petulant lover most resemble?—a cross-bow.

The wine product for Los Angeles county this season is estimated at 1,400,000 gallons.

A learned seal in a traveling menagerie this summer is said to be making an excellent "impression."

A Western paper says, "Since the jubilee, Boston has run so entirely music-mad that its men wear brass bands on their hats."

If your neighbor's hens are troublesome and steal across the way, don't let your angry passion rise. Fix a place for them to lay.

Anent the Belfast riots an Irish reporter says: "They fired two shots at him; the first shot killed him, but the second was not fatal."

Even the derided organ-grinder has his good point. He supplies to the pent-up poor one of the greatest luxuries of life—a change of air.

A Paris confectioner exhibits the following in his window—"Peres Hyacinthe—new sweetmeats for weddings. Highly recommended by MM. les Fiances."

"Jimfiscated" is a new word cropping out in the American papers. It seems to mean confiscated in a private way, as by a burglar with the aid of his jemmy—in fact, stolen.

The *Alta*, one of the most influential of the San Francisco journals, predicts that America, "before the end of the century, will be the most populous and wealthy of any nation in Europe."

The truth (says a Transatlantic paper) is unconsciously told in the following line from an advertisement: "Babies, after having taken one bottle of my soothing syrup, will never cry any more."

A lady gave a burglar a severe flogging with a dusting-brush the other night. She said she wouldn't have done it if she hadn't been under the impression that it was her husband just coming home.

"May I leave a few tracts?" asked a traveling quack doctor of a lady who responded to his knock. "Leave some tracks? Certainly you may," said she, looking at him most benignly over her specs; leave them with the heel towards the house, if you please."

The situation that has not its duty, its ideal, was never yet occupied by man. Yes, here, in this poor, miserable, hampered, despicable actual, wherein thou even now standest, here or nowhere is thy ideal; work it out therefrom; and working, believe, live, be free.—*Carlyle.*

One of a class of chubby four-year-old Sunday-school scholars, when talked to by his teacher about the sins and frailties of the body, was asked, "Well, my son, what have you besides this sinful body?" Quick as thought the little fellow responded, "A teen shirt and a nice new pair of breeches."

At a school in Green county, Iowa, the scholars caught a skunk and put it in the teacher's desk, thinking she would "smell a mice" and give them a holiday. She wasn't one of that kind. She took a spring clothes pin, fastened it on her nose, went on with the exercises, and let the scholars enjoy the perfume.

The following is the first verse of the new "Broker's Anthem," composed for Wall street. It is applicable elsewhere, and is quite comprehensive enough to dispense with the remainder of the production: "Teach me a counterfeit to know, and bargains good to see; for quarters I to others show, show fifty cents to me."

As a drunkard was staggering along the Bowery in New York the other night, he saw street cars passing him with different colored lights, and glaring at the red, yellow, blue and green lamps, was heard soliloquizing: "I mus' get out o' this place. It's too sickly. They're running the drug stores around on wheels."

The most conscientious conductor of whom we know anything is employed upon the Catawissa Railroad. The other day a woman gave birth to twins while upon the train, and the conductor, after doing all that he could to make things comfortable for the parties, tried to collect two half-fares from the father of the twins for the little passengers.

A reporter, not as reliable as romantic, in describing a fashionable wedding, got things mixed up some, as his account reads: "She stood before the altar on her head, a fair wreath of orange blossoms upon her dainty feet, lovely white satin shoes upon her roseate lips, a confiding, happy smile as she gazed lovingly upon him who stood by her side."

Time wears slippers of list, and his tread is noiseless. The days come softly dawning, one after another; they creep in at the windows; their fresh morning air is grateful to the lips that part to it; their music is sweet to the ears that listen to it; until, before we know it, a whole life of days has possession of the citadel, and time has taken us for its own.

Supreme Court.

In the matter of the Petition of Oopa, for a Writ of Mandamus.

Before ALLEN, C. J., and HARTWELL and WIDEMANN, J. J.—In Banco, heard by agreement in vacation, after January Term, 1873. ALLEN, C. J., delivered the opinion of the Court.

This is a petition for a Writ of Mandamus against John Montgomery, Police Magistrate of Honolulu, praying that he may be directed to grant a certificate of appeal as claimed by the defendant in the suit of John Meek vs. Oopa.

This application was heard before Mr. Justice Widemann, and the writ awarded by him, from which an appeal was taken. It appears that a writ was issued by the said Police Justice, by which the defendant was summoned to answer the complaint of the plaintiff, in which it was alleged that the defendant is in possession of certain premises, which he holds unlawfully and against the right of the plaintiff.

It was a process of summary proceeding under the statute, in which judgment was rendered by the Police Justice in favor of the plaintiff, and notice of an appeal was given by the defendant to the Justice within twenty-four hours, and a bond tendered in six days thereafter. The Justice declined to grant a certificate of appeal, on the ground that a bond had not been filed within the time prescribed by statute.

It is purely a question of construction of the statute by virtue of which the process was issued. Either party *may appeal* at any time within twenty-four hours after entry of the judgment to any Circuit Judge, or to the Supreme Court, but before an allowance for an appeal a bond for costs shall be filed.

There is a material distinction between an appeal and notice of an appeal. The one refers to an appeal complete in itself; the other, to an appeal to be perfected at some future time.

This language was used for the purpose of carrying out the intention of the statute. It is a summary process to recover possession of land held unlawfully and against the right of the plaintiff. It is unlike the ordinary process of ejectment where a doubtful title is involved, but in this case the defendant holds under the plaintiff, and ought to deliver up the possession at the expiration of the term, and the statute is enacted for the express purpose of defeating delays, and it would not be in conformity to its spirit to grant any delays not epecially given.

The statutes are consistent on the subject of appeals. By Sec. 245, in case of trespass of animals on land, the language is, an appeal shall not be allowed unless taken within five days, and a bond given for payment of costs. Here five days are given. In this case, twenty-four hours are given for perfecting the appeal.

The intent and spirit of this statute is further illustrated by reference to Section 949, in which it is declared that when a defendant is proceeded against for the non-payment of rent, he shall not be allowed to keep possession and take his appeal unless he first gives a bond to the plaintiff, with sureties, to pay the rent which may accrue after the appeal. The construction as claimed by the petitioner would defeat the security for rent for at least ten days, which would be expressly contrary to its provisions.

In Section 1006, a party may appeal by giving notice of his appeal within five days after judgment, and within ten days, paying costs and depositing a bond for costs that may accrue thereafter. A party has not appealed until he has done what the statute fully requires of him. In this case, either party may appeal within twenty-four hours, and if any requirement of the law is omitted, it is not an appeal which the Court can recognize.

HARTWELL, J.:

I concur with the view of the Chief Justice. In the King vs. Cullen, July Term, 1869, the defendant was not allowed to bring his appeal to this Court by reason of a failure to pay costs within the statutory time. In the Estate of Keliiahonui, January Term, 1866, an appeal was taken within the time required by the Rules, there being no statute affecting that case, but the appeal was held to be ineffectual for not filing a bond for costs. This was by analogy with the statutes of appeal in other cases, for the Rules required no bond. These decisions by the full Court rest on reasoning which I suppose concludes the present case, making the appeal ineffectual unless perfected by the bond.

If the Legislature had intended to allow ten days for filing bond to perfect the appeal in these cases I think they would have said so, and that the words "either party may appeal," used in this statute, are not synonymous with the words "give notice of appeal," used in the general statute. If the requirement be strict, it is for the Legislature only to lighten it.

WIDEMANN, J.:

With due deference to the views above expressed by the Chief Justice and First Associate Justice, and besides fully concurring in the general principle that laws should be strictly construed, I can still not concur in the above opinion. Under the construction of the law as above given, it may become a practical impossibility in some cases to fulfill the conditions of the statute. This would amount to a denial of justice, and as I can not bring myself to believe that the Legislature intended to make such a law, and as there seems to me to be a possibility of a different construction, I feel it my duty to record a dissent.

Supreme Court—In Banco.

JANUARY TERM, 1873.

BEFORE ALLEN, C. J., HARTWELL AND WIDEMANN, J. J.

Estate of Nakuapa, Deceased.

OPINION OF THE COURT BY WIDEMANN, J.

Keahi, claiming to be a relative of the deceased, petitioned the Court for letters of administration on the estate of Nakuapa. Kaosoapa contested the appointment, and the Chief Justice, before whom the case was heard, appointed A. F. Judd temporary Administrator, as there were several claimants.

Kaosoapa claimed the estate as adopted child (keiki hanai) of the deceased, and all the others claimed as blood relations. The Chief Justice decided against the claimant. Under this state of facts an appeal was taken from the decision of the Chief Justice to a jury, and a verdict was rendered in the July term, 1869, that Kaosoapa was "a keiki hanai" of Puhalahua and Nakuapa. A motion to set aside the verdict for want of evidence was denied. In December, 1870, a decree *pro forma* was made, based on this verdict, by the Chief Justice, awarding the estate to the claimant. From this decree an appeal was taken to the full Court in banco. The full Court, January term, 1872, decided that the verdict rendered was irresponsive to the issue, and a new trial was ordered. This new trial was had in the January term, 1872, and the verdict of the jury was that the claimant was not "the adopted heir of Nakuapa and Puhalahua." Exceptions to the full Court were taken, and the verdict was set aside for the admission of incompetent evidence. The whole case now is submitted to the full Court on all the evidence, to decide whether Kaosoapa is the adopted heir of Nakuapa and Puhalahua, and entitled to inherit the estate.

The decision of the Court in the January term, 1872, was given by ALLEN, C. J.: "The majority of the Court are of opinion that there was, prior to the written law, a custom and usage which recognized an adoption, if clearly defined in the contract, by which the child adopted might be an heir to the property of the adopter;" and WIDEMANN, J.: "The adoption of a child as heir, clearly and definitely made according to Hawaiian customs and usages, prior to the written law, I hold to be valid under existing laws, and I therefore, &c., &c."

The custom of adopting an heir, by the above decision made the law of the land, must be not alone clearly and definitely made, but it must also be proven that it was clearly and definitely made. The very idea of "clearly and definitely adopting an heir" necessitates the publicity of the act, and all the evidence on this point given at different times during the progress of the case tends to prove that the adoption of an heir by a chief was a matter of notoriety.

The question in the case at bar is: Was the claimant, Kaosoapa, adopted as an heir by Puhalahua and Nakuapa? was she adopted clearly and definitely, and was there a reasonable amount of notoriety of the fact?

The brief of claimant's counsel fully and ably sets forth the evidence and argument of his case, and taking them as a basis, and without considering the evidence on the opposite side, I have arrived at the conclusion that he has failed to establish the claimant's title.

The only witness of the actual adoption is Kapu; and he is also the only witness who states that Puhalahua and Nakuapa were living togther at the time of the adoption. According to him, Puhalahua was not at the first sandalwood expedition. His evidence given at three different times, does not give me an impression completely favorable as to its reliability in all particulars. Kukahiko's principal knowledge dates from the first sandalwood expedition. There, in the mountains of Waialua, Puhalahua and Kaahumanu told him of his adoption, and he consequently told the King of it. His recollection as to the date of the birth of claimant, the date of the sandalwood expeditions, and the age and height of the claimant at the first sandalwood expedition is not of the clearest. Kapu, being Puhalahua's head man, would best recollect whether or not his master went to the first sandalwood expedition. Taking, therefore, his statement to be the correct one, who told Kukahiko of the adoption at this sandalwood expedition? and what is the value of the evidence on that especial matter unless Puhalahua himself told him?

From the whole tenor of the evidence I do, however, find that Puhalahua and Nakuapa acknowledged claimant as kaikamahine hanai at various times; but I am not satisfied that, if Puhalahua adopted claimant at the time referred to by Kapu and Kukahiko, Nakuapa was in any way concerned in that adoption. I also find from the evidence that Nakuapa frequently held out hopes of inheritance to claimant. Puhalahua perhaps did so also. From all the *words* used by the witnesses on this head I could not for a moment infer that they referred to a foregone conclusion. What Puhalahua himself meant by them he has shown by his will.

Kapu, at this bearing, states that both Puhalahua and Nakuapa, at the time of the adoption, declared that they adopted claimant as their heir. This, and this only, is all the proof offered to sustain claimant's title to the estate under the decision of the Court cited above. This decision was made under the impression that this "adoption of an heir" was a *Hawaiian custom.* If ever it was such, Hawaiians knew it, and the witness knew it. Had the witness given this evidence at the first hearing, it would have carried great weight; its coming at this late day materially detracts from its weight.

There being no proof of any notoriety whatever, and with such frail evidence of the "adoption as heir," the claim must fall.

HARTWELL, J.:

This case, which has been litigating for several years, is now submitted to the Court on all the evidence to find the facts, and to decide whether the claimant Kaosoapa is entitled as heir to inherit this estate. These proceedings began in 1869 by petition for administration, which was brought before His Honor Chief Justice Allen and the claim of Kaosoapa was denied. On appeal to a jury, a verdict was rendered at the July Term, 1869, that the claimant was a *keiki hanai* or foster child of Puhalahua and Nakuapa. A motion to set aside this verdict for want of evidence was denied. In December, 1870, a decree was made by His Honor the Chief Justice awarding the estate to the claimant by virtue of this verdict. Appeal was taken from this decree to the full Court in banco, by whom the decree was vacated and a new trial was ordered. The Court agreed that the verdict was inconclusive of the issue and therefore not sufficient basis for the decree, but were divided on the question of the present legality of an ancient adoption as heir. The Chief Justice and Second Associate regarded the custom as still valid, while the First Associate Justice thought that the Statutes requiring written wills and deeds and agreements of adoption and directing the descent of property of intestates, operated to cut off claims under the ancient oral mode of adopting heirs, in all cases in which the ancestor died after the enactment of those Statutes.

At the second trial in the January Term, 1872, a verdict against the claimant was rendered, but on exceptions to the full Court, was set aside for the admission of incompetent evidence. The Court however overruled exceptions to the following instructions given to the jury, viz: "Declaration since 1843, (the date of the Act requiring written agreements of adoption), cannot be received; the adoption if valid must have been made before 1843. It is not enough that Puhalahua took the child before his marriage with Nakuapa, but it must be shown that Nakuapa adopted her as an heir." In approving these instructions, the Court said, "The ancient oral adoption has no force unless complete before 1843," and that "Puhalahua's will may be regarded as annulling his adoptive act, which in no aspect of the case became an ante-nuptial contract binding on the widow unless expressly disaffirmed by her. The widow's mere silence would not suffice to show her revival of the original adoption."

The evidence shows to my mind the following state of facts, briefly stated: about 1827 or 1828, Puhalahua a man of chief rank adopted the girl Kaosoapa as his child, the woman Nakuapa a former servant of his whom he afterward married, joining in the adoption. The child lived with them until their death. Puhalahua died in 1866 devising all his estate to Nakuapa, who died intestate in 1869. She had conversed with her attorney Mr. Austin about making a will, but when he arrived at her house just before her death, to draw her will at her request, she was too weak to act. She had never named Kaosoapa to him as her intended devisee. Both Puhalahua and Nakuapa were heard at various times to speak of the child as their "*hoilina*," a word meaning "heir" or "devisee." One witness said they called her so at the time of the original adoption. On the other hand, many persons connected by blood and marriage, or an intimate terms with the parties, testified that they had never been aware of the child's adoption as heir, or that she was regarded by the adopters as their heir. To this evidence the claimant's counsel strongly objected, as of a negative hearsay nature, incompetent to rebut evidence of an adoption, but the Court admitted it on the ground that no adoption of an heir can be recognized as valid unless it be shown that it was made with sufficient clearness and publicity among the kindred and family friends to make them aware of it.

It does not seem to me that the claimant has shown her adoption as the heir of Nakuapa under the rules of law as already laid down by this Court. I am not satisfied of the fact on all the evidence in her favor. All the objections to oral wills apply with full force in this class of cases, for memory is often at fault in regard to declarations made many years ago; and such declarations, unless confirmed in ample manner, are unsatisfactory for the the purpose of showing so solemn an act as the adoption of an heir. This Court has ruled out declarations since 1843, as incompetent under the Act which requires a written agreement of adoption. If such evidence were admissible except for the Statute, it would certainly be as likely to show a mere promise held out, or an intention never carried into effect, as to explain a previous act. Puhalahua's will, made in 1854, shows that he was early aware of the importance of making a will; so was Nakuapa, as shown by her attorney, Mr. Austin.

The Court held, as the evidence shows, that the adoption of an heir must be shown by circumstances of notoriety among the kindred and family circle of the parties. The objection to this evidence does not seem to me to be valid. The relation sought to be established is not the ordinary one of pedigree, but is one unknown to English and American law. Under that law, evidence of family conduct and of kindred is admitted. Berkely Peerage case, 4 Camp., 416. Shrewsbury Baronetcy case, 7 House Lords, 1. Tichborne Baronetcy case, —.

Whatever the grounds of the English rule, whether it be that such evidence is in the nature of admissions against evidence, part of the *res gestae*, or confirmatory of facts otherwise shown, in this case this evidence is admitted on the broad ground that the requisite publicity is a portion of the case to be proved. In a private bilateral or trilateral contract, want of knowledge on the part of those not parties to it would be negative and incompetent; but it is material in this case, which requires such knowledge to be shown in order to its validity.

I see no sufficient grounds for thinking that Nakuapa adopted Kaosoapa as her heir, and therefore I concur in the judgment of the Court disallowing her claim.

W. C. Jones for the Claimant.
A. F. Judd and S. B. Dole, *contra.*

ALLEN, C. J.:

The question of the claimant's right of inheritance as an adopted child of Nakuapa was submitted originally to the Court of Probate, in which I presided, and after careful examination of the law and evidence, I decided that by the ancient custom of Hawaiians, children adopted as heirs were entitled to the inheritance, but in this case the claimant had not established that relationship, and therefore was not entitled to the inheritance on that ground. As my associates have given very succinctly and clearly, the testimony, I consider it unnecessary to say more than that I see no reason, from any additional testimony introduced in the subsequent hearings, to change my opinion, and therefore I concur with them.